

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 CRIMINAL NO:09-435 (ADC)

7 MANUEL SANTIAGO-RODRÍGUEZ  
8 aka "Rubén D. Carela-Ramos",

9 Defendant.

10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
11 RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

12 **I. Procedural Background**

13 On December 28, 2009, Manuel Santiago-Rodríguez (hereinafter referred to as "defendant"),  
14 assisted and represented by counsel, waived his right to be charged by means of an indictment,  
15 consented to the filing of an information, and entered a guilty plea as to count one of the information.  
16 Count one charges that on or about on or about October 27, 2009, in the District of Puerto Rico and  
17 within the jurisdiction of this court, Manuel Santiago-Rodríguez , the defendant herein, being an alien  
18 previously deported and removed from the United States, was found in the United States, without  
19 having obtained, prior to his reembarkation at a place outside of the United States, the express consent  
20 of the Attorney General of the United States, or his successor, the Secretary of the Department of  
21 Homeland Security, acting through the Under Secretary of Border and Transportation Security, pursuant  
22 to Title 6, United States Code, Sections 202(3), 202(4), and 557, to reapply for the admission into the  
23 United States. This count also alleges that the aforesaid offense was committed after defendant was  
24 convicted and deported for the commission of an aggravated felony, all in violation of Title 8, United  
25 States Code, Section 1326(a) and (b)(2).

**II. Consent to Proceed Before a Magistrate Judge**

In open court the defendant was questioned as to the purpose of the hearing being held and was advised of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that his answers would be truthful; (c) the potential consequences of lying under oath (such as a perjury charge); and (d) his right to have the entry of plea proceedings presided by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consented to proceed before the undersigned magistrate judge.

**III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure****A. Rule 11(c)(1) Requirements**

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1<sup>st</sup> Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1<sup>st</sup> Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1<sup>st</sup> Cir. 1999).

**B. Admonishment of Constitutional Rights**

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving him guilty beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no adverse inference could be made in relation to his decision not to testify.

3. To a speedy trial before a district judge and a jury, at which he would be entitled to see and cross examine the government witnesses, present evidence on his behalf, and challenge the government's evidence.

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2       4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be  
3       convinced of defendant's guilt beyond a reasonable doubt by means of admissible evidence.

4       5. To use the subpoena power of the court to compel the attendance of witnesses.

5       Upon listening to the defendant's responses, observing his demeanor and his speaking with his  
6       attorney, that to the best of counsel's belief defendant had fully understood his rights, it is determined  
7       that defendant is aware of his constitutional rights.

8       **C. Consequences of Pleading Guilty**

9       Upon advising defendant of his constitutional rights, he was further advised of the consequences  
10      of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon having his  
11      guilty plea accepted by the court, he will be giving up the above rights and will be convicted solely on  
12      his statement that he is guilty.

13       In response to further questioning, defendant was explained and he understood that if convicted  
14      on count one he will face the following penalties: a term of imprisonment of not more than twenty (20)  
15      years, a fine not greater than two hundred fifty thousand dollars (\$250,000.00), and a term of supervised  
16      release of no more than three (3) years. The defendant was explained what the supervised release term  
17      means and was also made aware that the court must impose a mandatory penalty assessment of one  
18      hundred dollars (\$100) per offense pursuant Title 18, United States Code, Section 3013(a).

19       The defendant was advised that the ultimate sentence was a matter solely for the court to decide  
20      in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon  
21      him, he later could not withdraw his guilty plea for that reason alone. Furthermore, the defendant was  
22      admonished of the fact that by pleading guilty he would not be allowed later on to withdraw his plea  
23      because he eventually might disagree with the sentence imposed, and that if he violates the conditions  
24      of supervised release, that privilege could be revoked and he could be required to serve an additional  
25      term of imprisonment. He was also explained that parole has been abolished. The defendant  
26      understood this.

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**D. Plea Agreement<sup>1</sup>**3  
The parties have entered into a written plea agreement that, upon being signed by the  
4 government, defense attorney and defendant, was filed and made part of the record. Defendant was  
5 clearly warned and recognized having understood that:6  
1. The plea agreement is not binding upon the sentencing court.7  
2. The plea agreement is an agreement between the defendant, defense counsel and the  
8 attorney for the government which is presented as a recommendation to the court in regards to the  
9 applicable sentencing adjustments and guidelines, which are advisory.10  
3. The agreement provides a sentencing recommendation and/or anticipated sentencing  
11 guideline computation, that can be either accepted or rejected by the sentencing court.12  
4. In spite of the plea agreement and any sentencing recommendation contained therein, the  
13 sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the  
14 maximum possible penalty prescribed by statute.15  
Defendant acknowledged having understood this explanation.16  
**E. Government's Evidence (Basis in Fact)**17  
The government presented a proffer of its evidence consistent with the version of facts of the  
18 plea agreement with which the defendant concurred. Accordingly, it is determined that there is a basis  
19 in fact and evidence to establish all the elements of the offense charged.20  
**F. Voluntariness**21  
The defendant accepted that no threats had been made to induce him to plead guilty and that he  
22 did not feel pressured to plead guilty.23  
**G. Special Warnings**24  
1. **Waiver of Appeal:** The defendant was explained, and he understood, that if the court  
25 accepts the plea agreement and sentences him according to its terms and conditions, he will be  
26 surrendering his right to appeal the sentence and judgment in this case.27  
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"Plea agreement" refers to the agreement and its supplement.

2. **Administrative Consequences:** The defendant was explained, and he understood, that as  
3 a result of entering a guilty plea, he may be subject to adverse administrative consequences, including  
4 but not limited to deportation or removal from the United States of America.

5 **IV. Conclusion**

6 The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of  
7 Criminal Procedure, and has entered a plea of guilty as to count one of the information. After  
8 cautioning and examining the defendant under oath and in open court, concerning each of the subject  
9 matters mentioned in Rule 11, as described in the preceding sections, I find that defendant Manuel  
10 Santiago-Rodríguez is competent to enter this guilty plea, is aware of the nature of the offense charged  
11 and the maximum statutory penalties that the same carries, understands that the charge is supported by  
12 the government's evidence, has admitted to every element of the offense charged, and has done so in  
13 an intelligent and voluntary manner with full knowledge of the consequences of his guilty plea.  
14 Therefore, I recommend that the court accept the guilty plea of the defendant and that the defendant be  
15 adjudged guilty as to count one of the information.

16 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B). Any objections  
17 to the same must be specific and must be filed with the Clerk of Court within fourteen (14) days of its  
18 receipt. Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and  
19 recommendation is a waiver of the right to review by the district court. United States v. Valencia-  
20 Copete, 792 F.2d 4 (1<sup>st</sup> Cir. 1986).

21 SO RECOMMENDED.

22 In San Juan, Puerto Rico, this 4<sup>th</sup> day of January, 2010.

23  
24 s/Marcos E. López  
U.S. MAGISTRATE JUDGE